STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Agenda ID #6865
and
Alternate Agenda ID #6866
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 04-09-003

Enclosed are the proposed decision of President Michael Peevey and the alternate proposed decision of Administrative Law Judge (ALJ) Sarah Thomas, the assigned ALJ in this proceeding. The proposed decision and the alternate decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate proposed decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to President Peevey's advisor Nancy Ryan at ner@cpuc.ca.gov and ALJ Thomas at srt@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

ATTACHMENT

R.04-09-003: Opinion Regarding Gains on Sale of Utility Assets (Phase Two) – Issues Not Resolved in Decision 06-05-041

Pursuant to Pub. Util. Code § 311(e), this is the digest of the substantive differences between the proposed decision of Commissioner Michael Peevey, (mailed on August 2, 2007) and the alternate proposed decision of Administrative Law Judge (ALJ) Sarah Thomas (simultaneously mailed on August 2, 2007).

In Decision (D.) 06-05-041, the Commission adopted a process for allocating gains and losses on sale received by certain electric, gas, telecommunications, and water utilities when they sell utility land, assets such as buildings, or other tangible or intangible assets formerly used to serve utility customers. The Commission left open a few issues for further comment, as it had an inadequate record with which to render a decision at the time. Comments were filed July 20, 2006.

In Phase 2 of Rulemaking 04-09-003, the Commission set out to decide the issues not resolved in D.06-05-041. Those issues are: (1) what constitutes a "major facility" under Pub. Util. Code § 455.5, (2) the formula for determining a reasonable rate of return on Contributions in Aid of Construction (CIAC) funds in the context of water utilities, and (3) whether condemnations are sales for the purposes of Pub. Util. Code § 790.

The proposed decision (1) adopts separate Section 455.5 definitions for electric, gas, and water facilities; (2) finds no evidence to support a different rate of return for plants purchased with CIAC proceeds, but requires any company seeking to sell CIAC property to apply to the Commission for approval of such sale and to prove that the property is no longer necessary or useful; and (3) holds that the three condemnation scenarios at issue in the proceeding are sales covered by Pub. Util. Code § 790.

The alternate proposed decision differs from the original proposed decision only in its discussion of Pub. Util. Code § 790 and how it relates to condemnations (section (3)). The alternate proposed decision finds that because Section 789 states that water companies should be "encouraged" to sell property that is no longer necessary or useful, and condemnations are not voluntary actions by the water company, no "encouragement" is at play in condemnation scenarios. Thus, Section 790 does not apply to condemnations (either eminent domain condemnations, sales in anticipation of condemnation, or inverse condemnations).

(END OF ATTACHMENT)

ALJ/SRT/hkr **ALTERNATE DRAFT** **Agenda ID #6866**
Alternate to Agenda ID #6855
Quasi-Legislative

Decision **ALTERNATE PROPOSED DECISION OF ALJ THOMAS**
(Mailed 8/2/2007)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion for the purpose of considering policies and guidelines regarding the allocation of gains from sales of energy, telecommunications, and water utility assets.	Rulemaking 04-09-003 (Filed September 2, 2004) **(Phase Two)**

OPINION REGARDING GAINS ON SALE OF UTILITY ASSETS (PHASE TWO)—ISSUES NOT RESOLVED IN DECISION 06-05-041

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OPINION REGARDING GAINS ON SALE OF UTILITY ASSETS (PHASE TWO)—ISSUES NOT RESOLVED IN DECISION 06-05-041

1. Summary

In Decision (D.) 06-05-041, we adopted a process for allocating gains on sale received by certain electric, gas, telecommunications and water utilities when they sell utility land, assets such as buildings, or other tangible or intangible assets formerly used to serve utility customers. We left open a few issues for further comment, as we had an inadequate record on which to render a decision at that time.

The open issues and our decisions on them are as follows:

- **What constitutes a "major facility" under Pub. Util. Code § 455.5?**

Section 455.5[1] requires that utilities report to the Commission when a "major facility" is taken out of service for nine or more consecutive months, to ensure that rates do not include the value of these facilities. In D.06-05-041, we suggested the parties meet and confer, and also file an additional round of comments, addressing a means of defining "major facility" that varies depending on the size of the utility.

We adopt separate § 455.5 definitions for electric, gas and water facilities. We adopt the parties' consensus definitions for electric utilities, and adopt a threshold for gas and water utilities that ensures that high value facilities are reported. We believe the definitions we adopt protect ratepayers from having to

[1] All statutory references are to the Public Utilities Code unless otherwise noted.

make significant overpayments, while not imposing excessive regulatory or financial burdens on the utilities we regulate.

- **Formula for determining a reasonable rate of return on Contribution in Aid of Construction (CIAC) funds (water utilities)**

In D.06-05-041, the Commission found that under § 790, "water companies should re-invest gains from the sale of assets recorded under Contributions in Aid of Construction (CIAC) in new water infrastructure, and that the water companies may earn a reasonable rate of return on that reinvested gain." However, the Commission deferred a determination of what constitutes a "reasonable rate of return." We asked parties to comment whether this rate of return "ought to be the same as (or different from) the rate of return the utility earns on other property."

We find that there is no evidence to support a different rate of return for plant purchased with the proceeds of CIAC sales. Instead, we require any water company seeking to sell CIAC to apply to the Commission for approval of such sale, and in so doing to prove the property is no longer necessary and useful and that the utility is not selling the property simply to obtain a rate of return on plant purchased with the proceeds.

- **Sale of water utility assets due to condemnation or under threat of condemnation**

In comments leading up to D.06-05-041, certain water utilities contended that § 790 allows water company shareholders to reinvest proceeds from three different types of condemnation scenarios in infrastructure, rather than returning such proceeds to ratepayers. These scenarios are: 1) condemnation, 2) sale in anticipation of condemnation and 3) inverse condemnation. We asked for further comment on these scenarios in D.06-05-041.

We find that none of the three scenarios implicate § 790 because they are not voluntary sales. Thus, the proceeds resulting from each condemnation scenario must be allocated among utility ratepayers and shareholders in accordance with the rules we promulgated in Phase 1 of this proceeding (with 100% of the gain from nondepreciable property such as land going to ratepayers; and a 67%-33% ratepayer/shareholder allocation for depreciable property such as buildings).

2. Background

After the Commission issued D.06-05-041, Administrative Law Judge (ALJ) Thomas sent two rulings to parties asking them for comment on the three open issues.[2] At the parties' request, they were given until September 2006 to furnish complete responses to the rulings. The parties filed the comments listed in Appendix A to this decision.

At the same time as ALJ Thomas was gathering comments on the open issues, Applications for Rehearing of D.06-05-041 were pending. The Commission resolved those issues in December 2006 in D.06-12-043. One of the rehearing issues related to whether D.06-05-041 properly interpreted § 790, one of the statutes also at issue here. We therefore refrained from deciding the issues here until the Commission had decided the Applications for Rehearing. Ultimately, D.06-12-043 upheld the Commission's application of § 790, and therefore does not affect our approach to the issues presented here.

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[2] *Administrative Law Judge's Ruling Regarding Allocation of Gains on Sale of Utility Assets,* filed June 29, 2006, and *Administrative Law Judge's Ruling Requiring Parties to Meet and Confer,* filed Aug. 14, 2006. The first ruling asked for comment; the second required the parties to meet and confer in an attempt to reach agreement on the § 455.5 issue. The parties' comments are listed in Appendix A to this decision.

3. Discussion

3.1. "Major Facility" Under Pub. Util. Code § 455.5

3.1.1. Introduction

Section 455.5 requires that utilities report periodically to this Commission whenever any portion of an "electric, gas, heat, or water generation or production facility" is out of service, and immediately when a portion of such facility has been out of service for nine consecutive months. Section 455.5(f) notes that an "electric, gas, heat, or water generation or production facility includes only such a facility that the commission determines to be a major facility . . . ." The purpose of the statute is to ensure that utilities not earn a rate of return on utility assets (or portions thereof) that are out of service for at least nine months. Allowing a rate of return on such property would overcompensate the utilities at ratepayers' expense.

We proposed in the original Order Instituting Rulemaking (OIR) initiating this proceeding that a "major facility" include any asset with an initial acquisition price of $500,000 or more. The parties' comments suggested we avoid a "one size fits all" approach since the definition of what is "major" depends on the size of the utility. We agreed with this premise in D.06-05-041[3] and asked interested parties to meet and confer in an attempt to reach a consensus definition for electric, gas and water facilities. The parties held several meet and confer sessions. While the parties did not reach complete agreement, they came close, as shown below.

[3] D.06-05-041, *mimeo.*, pp. 51-52.

Where possible, we adopt the consensus definitions because we find them reasonable. We also agree with the premise, borne out by the parties' comments, that differences in the electric, gas and water industries merit different definitions for each industry.

3.1.2. Electric Utility Reporting Threshold

3.1.2.1. Comments—Electric Utility Reporting Threshold

The electric utilities and other interested parties generally reached a consensus on the types of electric facility subject to the § 455.5 reporting requirements.[4] They recommend for electric utilities that

> a "major generation or production facility" include any generation plant or facility with nameplate capacity of 50 megawatts (MW) or more, *or* that represents at least one percent (1%) of an electric utility's retained generation system capacity. System capacity includes the utility's ownership share in jointly-owned and out-of-state facilities.
>
> A reportable outage of a "portion" of a major generation facility should be interpreted as an outage of any independent operating unit at a major generation facility. Thus, electric utilities must report

[4] *See* Aglet Consumer Alliance (Aglet) Reply Comments (9/8/2006) at 2; Southern California Edison Company (SCE) Reply Comments (9/8/2006) at 2; San Diego Gas & Electric Company (SDG&E)/Southern California Gas Company (SoCalGas) Reply Comments (9/8/2006) at 2 ("either Edison's or Aglet's wording is acceptable to SDG&E and SoCalGas"); Pacific Gas and Electric Company (PG&E) Reply Comments (9/8/2006) at 2; Division of Ratepayer Advocates (DRA) Reply Comments (9/8/2006) at 2 (with one qualification: that the definition be modified to include electric generation facilities of $30 million net plant value or greater).

> any outage of a single generating unit for which the capacity of the entire plant exceeds the 50 MW or 1% minimums.[5]

Aglet states that this definition will cover most large generation facilities of the three largest electric utilities, PG&E, SCE, and SDG&E, including all of their nuclear and coal facilities and out-of-state plants (Palo Verde Nuclear Generating Station and Four Corners Generating Station). SCE concurs regarding its facilities, stating that at present the definition would apply to the same group of SCE facilities using either the one percent prong (approximately 60 MW) or the 50 MW prong, and capture as "major facilities" SCE's Mountainview plant, each of SCE's shares in coal and nuclear facilities, and SCE's hydroelectric facilities.

DRA agrees generally with the consensus definition, but would add a qualifier to the 50 MW/1% of retained generation system capacity threshold. Noting that the consensus definition would leave out significant hydroelectric facilities of PG&E,[6] DRA proposes adding a threshold of $30 million in net plant value to the conditions triggering § 455.5 reporting requirements.

PacifiCorp proposes a wrinkle on the consensus definition because it is a multi-jurisdictional electric utility with limited facilities in California. It suggests that the 1% of system generation capacity be calculated based on all PacifiCorp-owned or jointly owned generation within PacifiCorp's six state service

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[5] For example, PG&E's Bucks Creek hydroelectric plant has two units of approximately 33 MW each. Under the consensus proposal, PG&E would report an outage at either unit, even though the unit capacity is below the limits, because the capacity of the entire plant exceeds the limit. Aglet Reply Comments at 2.

[6] DRA identifies PG&E's DeSabla and Newcastle hydro facilities, with net plant value of $37.3 million and $55.9 million, respectively. DRA Reply Comments (9/8/2006) at 2.

territories[7] (approximately 9000 MW of generation) rather than its much smaller California base. This modification will require less reporting by PacifiCorp, as 1% of 9000 MW will require reporting of far fewer outages than if PacifiCorp reports outages of 1% of the approximately 170 MW of generation PacifiCorp uses to serve California.

3.1.2.2. Discussion—Electric Utility Reporting Threshold

We adopt the consensus threshold for electric utilities, as follows:

> For electric utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 includes any generation plant or facility with nameplate capacity of 50 megawatts (MW) or more, or that represents at least one percent (1%) of an electric utility's retained generation system capacity, whichever is smaller. System capacity includes the utility's ownership share in jointly-owned and out-of-state facilities.
>
> A reportable outage of a "portion" of a major generation facility should be interpreted as an outage of any independent operating unit at a major generation facility. Thus, electric utilities must report any outage of a single generating unit for which the capacity of the entire plant exceeds the 50 MW or 1% minimums.
>
> A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

This definition appropriately defines "major facility" pursuant to § 455.5(f) as a relative term. Should a utility's owned capacity grow, whether through mergers, major acquisitions, or other major investments, then the one percent threshold would also grow, and smaller, now-less-significant facilities would

[7] PacifiCorp Reply Comments at 2-3.

drop out of the reporting requirement. Conversely, should a utility's owned capacity decline, whether through municipalization or other major divestiture, smaller units would become relatively more important to the overall system, and therefore appropriately would become reportable under § 455.5.

We do not adopt DRA's additional $30 million net plant value threshold, although we acknowledge reasonable minds could differ on the appropriate dollar threshold. The 1% threshold that is part of the test we adopt is adequate in our view to capture out of service facilities with a material impact on rates.

We adopt PacifiCorp's recommendation for its own reporting, and allow it to calculate the 1% or 50 MW threshold based on its total generation rather than the much smaller number representing the generation it uses to serve California. This proposal appropriately balances the need for reporting to avoid overcharging ratepayers against overly burdensome or unnecessary reporting.

3.1.3. Natural Gas Utility Reporting Threshold

3.1.3.1. Comments—Natural Gas Utility Reporting Threshold

The parties could not reach consensus on a definition of "major facility" for natural gas production facilities. The key dispute is over whether gas storage fields are reportable under the statute. This dispute matters, because if storage fields are not included under the statute, no gas facilities will be reportable at all. This is because utility-owned wells and gathering facilities tend to be small and dispersed over broad areas, and are therefore not "major facilities" by any party's definition. Storage fields, by contrast, are large, high-value facilities whose improper inclusion in rate base could have significant impact on ratepayers.

SoCalGas and SDG&E contend a storage facility does not "produce" gas, and therefore is not covered by the statute at all. They add that in other parts of the Public Utilities Code when the Legislature intends to include storage fields, it says so explicitly.

Aglet believes the term "gas production facilities" includes gas wells, gathering facilities and storage facilities, but that no wells or gathering facilities are "major facilities." Thus, according to Aglet, the only reportable facilities under § 455.5 are storage fields. If storage fields are not included in the statute, the statute would cover no gas facilities, which defies logic, contends Aglet.

Aglet recommends using 25% of a utility's capacity to trigger the reporting requirement. According to Aglet, the following facilities either meet the threshold or are of unknown size, and thus reportable: a) PG&E's McDonald Island and Los Medanos gas storage fields; and b) SoCalGas' Aliso Canyon, Honor Rancho, La Goleta and Playa Del Rey gas storage fields.[8] Aglet also proposes that "out of service" for gas storage fields mean that "the mechanical equipment used to inject or withdraw gas at the field is not available to inject or withdraw gas at a rate of at least 25% of the capacity of the equipment."[9]

PG&E supports the following definition: "any production facility that represents at least one percent (1%) of a gas utility's rate base."

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[8] For security reasons, SoCalGas does not report the sizes or capacities of its storage fields. Absent such information, Aglet assumes all such fields are major fields.

[9] Aglet Reply Comments at 3.

3.1.3.2. Discussion—Natural Gas Utility Reporting Threshold

In determining what gas facilities require reporting under § 455.5, we look to the purpose of the statute. Section 455.5 is a ratemaking statute, and seeks to avoid giving utilities a rate of return on property that is out of service. Thus, we agree with Aglet that it makes no sense to exclude gas storage operations, because if we do, no gas utility property will be reportable. This cannot have been the Legislature's intent.

The fact that SoCalGas/SDG&E report outages on their electronic bulletin board on a real-time basis,[10] while important for other purposes such as reliability of supply, does not address the ratemaking concern the Legislature addressed in § 455.5. As we explained in D.06-05-041, the statute is intended to avoid charging a rate of return on property that is out of service:

> Assuming a rate of return in the 10% range, such an asset, if left in rate base without being used for utility service, could lead to significant ratepayer overpayments. The statute's purpose to avoid such overpayment is clear on its face. If nothing else, the statute is designed to ensure that ratepayers do not pay a rate of return on assets in rate base that the utility is not using for utility service. Setting the "major facility" definition too high could cause significant ratepayer harm.[11]

We thus find that major facility includes, for gas facilities, their storage fields. We also find reasonable Aglet's definition of "out of service": "out of

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[10] SDG&E/SoCalGas Reply Comments (9/8/06) at 4.

[11] D.06-05-041, *mimeo.,* p. 51. *See also* California Water Association (CWA) Reply Comments (9/8/06) at 5 ("All parties appear to have agreed that the Legislative policy underlying § 455.5 was an interest in protecting against significant ratepayer overpayments.").

service" for gas storage fields mean that "the mechanical equipment used to inject or withdraw gas at the field is not available to inject or withdraw gas at a rate of at least 25% of the capacity of the equipment."

We do not agree with Aglet that all storage facilities of unknown size are reportable. Rather, gas utilities shall report out of service conditions on all facilities, including gas storage facilities, that meet the 25% threshold. If they are concerned about the security implications of reporting the size of facilities, they may file a motion or declaration concurrently with their § 455.5 submission seeking confidential treatment.

We thus adopt the following definition of a reporting threshold for gas utilities:

> For gas utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 is a facility representing at least 25% of the utility's storage capacity. A "major generation or production facility" for this purpose includes a gas storage field. A gas storage field is "out of service" if the mechanical equipment used to inject or withdraw gas at the field is not available to inject or withdraw gas at a rate of at least 25% of the capacity of the equipment.
>
> A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

3.1.4. Water Utility Reporting Threshold

3.1.4.1. Comments—Water Utility Reporting Threshold

Park Water, CWA, and Aglet reached a consensus on the appropriate reporting threshold for water utilities, as follows:

> A "major generation or production facility" is a facility or combination of facilities, such as wells, interconnections, surface water diversion structures, and/or treatment facilities, that:

> (a) produces water of a quality suitable for delivery into the distribution system of the utility or into storage for eventual delivery to customers; (b) is accounted for as "Source of Supply Plant" in Accounts 311 through 317 of the Uniform System of Accounts for Utilities, or as "Pumping Plant" in Accounts 321 through 325, or as "Water Treatment Plant" in Accounts 331 and 332; and (3) has a Net Plant Value of at least $3,000,000 in the case of a Class A water company, $2,000,000 in the case of a Class B water company, or $1,000,000 in the case of a Class C or Class D water company.
>
> A "portion" of a major production facility is a facility that, if it is out of service, prevents production of water from the major facility as a whole.
>
> "Net Plant Value" means recorded plant in service minus accumulated depreciation.

Park Water asserts that in the Class A utility context, basing the reporting threshold on the initial cost of the facility would be over-inclusive, and therefore that it makes sense to base the § 455.5 reporting threshold on the facility's depreciated value. Park Water also states that the threshold should not be so low as to burden water companies with excessive reporting requirements. It notes that cost increases of less than 1% of a company's revenue requirement are not significant enough to warrant a rate increase between general rate cases (GRC). It follows, states Park, that a "major facility" should not be defined so liberally as to include facilities without a GRC level of materiality to the company's revenue requirement.

CWA notes that the consensus definition places the focus in the appropriate place: on the revenue requirement of the utility. Out of service plant with a high net (depreciated) value will result in the most significant ratepayer overpayments, it states, and therefore should be reported under § 455.5.

DRA recommends a different definition that focuses on the original cost of the facilities:

> Class A water utility "major facilities" for purposes of § 455.5 are any real or personal property having an initial acquisition price of $500,000 or more as recorded in Uniform System of Accounts (USOA) account numbers 311-325; Class B, C, and D water utility "major facilities" are calculated based on the average of the total original acquisition prices of all the real and personal property recorded in USOA account numbers 311-325.

DRA later states, inconsistently, that "the only criterion for § 455.5 reporting purposes should be whether the real or personal property is booked in one or more of the USOA account nos. 311-325. A dollar threshold should not be allowed…."[12]

3.1.4.2. Discussion—Water Utility Reporting Threshold

The definition of major facilities should focus on the revenue requirement impact of including out of service facilities in rate base. The consensus definition appropriately has this focus, and ensures adequate reporting without imposing unnecessary regulatory burdens.

We reject DRA's proposal, which focuses on the initial cost of utility plant. A definition that is tied to the revenue requirement (the net value of utility facilities) makes more sense, because it is that value that the Commission uses to calculate rates.

We are concerned that the $1,000,000 agreed-upon threshold for Class C and D water companies is too high to be meaningful in the context of these

[12] DRA Reply Comments (9/13/06) at 3.

companies' small operations. It is likely that outages of facilities worth $1,000,000 will cause serious interruptions in water service to these companies' customers, and that we will thus know of the outages as a result of customer complaints or other notification. We therefore question whether § 455.5 reporting is meaningful or necessary for these small companies. No party addresses the Class C and D issues specifically. We are inclined to waive § 455.5 altogether for these companies, and instead to rely on receiving notice of such large outages in the ordinary course. Thus, we will not adopt the § 455.5 reporting requirement for Class C and D water companies.

We also believe the consensus definition should be modified to make clear that all outages, whatever the cause, should be reported. Thus, utilities must report out of service conditions caused by events outside the control of the utility such as drought or earthquake, for example, as well as conditions caused by the utility such as a decision to take facilities out of service because they are no longer necessary or useful.[13]

Thus, we adopt the following § 455.5 definition for water utilities:

> For water utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 is a facility or combination of facilities, such as wells, interconnections, surface water diversion structures, and/or treatment facilities, that: (a) produces water of a quality suitable for delivery into the distribution system of the utility or into storage for eventual delivery to customers; (b) is accounted for as "Source of Supply Plant" in Accounts 311 through 317 of the Uniform System of Accounts for Water Utilities, or as "Pumping Plant" in Accounts 321 through 325, or as "Water Treatment Plant" in Accounts 331 and 332; and (3) has

[13] This same provision should apply to electric and gas utilities.

a Net Plant Value of at least $3,000,000 in the case of a Class A water company, or $2,000,000 in the case of a Class B water company.

A "portion" of a major production facility is a facility that, if it is out of service, prevents production of water from the major facility as a whole.

"Net Plant Value" means recorded plant in service minus accumulated depreciation.

A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

3.2. Formula for Determining a Reasonable Rate of Return on CIAC Funds (Water Utilities)

3.2.1. Statutory Framework

For gain on sale purposes, water utilities are unique because there is a specific statute governing gain on sale allocation, the Water Utility Infrastructure Improvement Act of 1995, Pub. Util. Code § 789 *et seq*. (Infrastructure Act). The statute provides, in pertinent part, that a water corporation shall invest the "net proceeds" of the sale of no longer necessary or useful "real property" in water system infrastructure that is necessary or useful for utility service. The statute gives a utility a period of eight years from the end of the calendar year in which the water corporation receives the net proceeds to invest them in facilities necessary or useful to the performance of duties to the public. Any proceeds the utility does not so invest in the eight-year period shall be allocated solely to ratepayers.

We held in D.06-05-041 that the Infrastructure Act "limit[s] Commission discretion in how it allocates gains on sale of real property, provided that water companies shall use the proceeds from sales of formerly used and useful utility real property to invest in new water infrastructure. Such proceeds may not be

used to reduce rates or otherwise be returned to ratepayers unless the water companies fail to reinvest the proceeds within the eight-year period contained in § 790(c)."[14] We also stated that, "water utilities must invest net proceeds from the sale of formerly used and useful real property in new water infrastructure. They need not refund such proceeds to ratepayers, but they may not pay the funds out to shareholders in the form of dividends or other earnings either."[15]

We held that § 790 also allows water utilities to reinvest gains on sale from developer CIAC property. However, we deferred decision on what the rate of return should be on infrastructure traceable to CIAC proceeds. This decision addresses the rate of return issue.

3.2.2. Comments—Developer CIAC

DRA/The Utility Reform Network (TURN) contest our holding that § 790 allows water utilities to earn a rate of return on infrastructure purchased with proceeds from CIAC property. Because the utility does not purchase such property, but rather receives it from land developers, DRA/TURN claim, it is inequitable to allow water utilities a rate of return on infrastructure installed with proceeds from the sale of such CIAC property (CIAC property). They unsuccessfully made this same claim in an Application for Rehearing of D.06-05-041. All rehearings of D.06-05-041 have been resolved and our determination that D.06-05-041 correctly decided the § 790 issue stands. *See* D.06-12-043.

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[14] D.06-05-041, *mimeo.*, p. 62 (footnotes omitted).

[15] *Id.*, p. 64.

In response to our denial of rehearing in D.06-12-043, several parties claim the rate of return on CIAC property should be zero, or an amount that does not allow the utility to earn a return on property it had no financial role in acquiring. Aglet contends that because shareholders do not invest in CIAC property, and the utility has put no capital at risk, the only fair rate of return is zero. Anything else, claims Aglet, would give water utilities a perverse incentive to sell CIAC.

DRA/TURN note that since the water utility may not earn a rate of return on CIAC before selling it, it should not earn a return after selling it. Since CIAC is a gift, its character should not change after sale. DRA/TURN cite several Commission decisions holding utilities are not entitled to a rate of return on CIAC property.[16]

The water utilities take the position that there is no basis to allow a lower rate of return on CIAC property than any other water utility property in rate base. CWA, for example, quotes § 790(b), which states that "All water utility infrastructure . . . shall be included among the water corporation's other utility property upon which the Commission authorizes the water corporation the opportunity to earn a reasonable return." This provision, in CWA's view, dictates *one* class of § 790 property ("all water utility infrastructure"), *one* rate base ("the water corporation's other utility property") and *one* rate of return ("a reasonable return").

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[16] DRA/TURN Comments (7/20/06) at 3, citing *OIR re Government Financed Funding to Investor-Owned Water and Sewer Utilities*, R.04-09-002, 2004 Cal. PUC LEXIS 411, at * 4 n.1 (filed Sept. 2, 2004), in turn citing *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591(1944); *Bluefield Water Works Co.* v. *Public Service Commission,* 262 U.S. 679 (1923); *Duquesne Light Co.* v. *Barash,* 488 U.S. 299 (1989).

Park Water asserts that to give water utilities a lower rate of return on property purchased with CIAC proceeds violates § 790 because it effectively gives some of the gain on sale to ratepayers. "Even a slight reduction in rate of return, operating over the probably 40 year average life of the facilities funded with the reinvestment of the gain, would result in the allocation of a substantial portion of the gain to ratepayers."[17]

3.2.3. Discussion—Developer CIAC

We have already considered and rejected in D.06-05-041 (and on rehearing in D.06-12-043) assertions that water utilities may not earn a rate of return on CIAC. This result is dictated by the Infrastructure Act, and we do not have discretion to deviate from the statute. Commission decisions issued before the Legislature promulgated § 790 are not relevant to an interpretation of whether a rate of return is payable.

However, to mitigate the impact of allowing a water utility to profit from the sale of property it received for free, we proposed in D.06-05-041 that a "reasonable" rate of return on CIAC property might be lower than the rate a utility earns on other property. We agree with Aglet that allowing a full rate of return on such property might create an incentive for water utilities to sell CIAC property in order to reinvest the proceeds in infrastructure and earn a rate of return where none was earned before sale.

However, there is no proposal in the record, apart from the ratepayer advocates' claim for a zero rate of return, supporting a rate that differs for CIAC property. Awarding a zero rate of return would be a transparent attempt to

[17] Park Water Comments (7/20/06) at 4.

circumvent the statute. The better approach to ensure that water utilities do not sell CIAC property to boost their rate base is to require an approval mechanism. We will therefore impose an approval requirement for water companies selling CIAC property they contend is subject to § 790 (that is, as to which they claim the right to reinvest the proceeds and for which they do or will receive a rate of return on infrastructure purchased with those proceeds). By the same token, we do not preclude any party from asserting, in an individual water company's general rate case or elsewhere, that its rate of return should be lowered to reflect that some property in its rate base was originally CIAC and thus acquired for free.

Any water company that sells real property that a developer contributed to the water company in aid of construction (CIAC property) which it claims or will claim is subject to § 790 shall seek leave from the Commission to do so. In so doing, the water company shall prove that the property is no longer necessary or useful and that the sale is not intended merely to gain an opportunity for the water company to earn a rate of return on infrastructure purchased with the sale proceeds. The water company shall seek such approval by application or Advice Letter prior to any such sale, and may not make the sale without Commission authorization.

Whether the approval requires an application or an Advice Letter will be governed by the rules of our § 851 pilot program, approved in Resolution ALJ-186 (August 30, 2005), or successor document. That pilot program currently allows utilities to elect to file an Advice Letter instead of a § 851 application for certain small transactions.

Here, we are requiring an application or Advice Letter because of the potential for water companies to sell necessary and useful CIAC property out of

a motive to earn a rate of return after reinvesting the proceeds. Since CIAC property prior to its sale does not earn a rate of return, the opportunity could be substantial to convert it to a profit-making asset from one on which the company earns no return. Our modest approval requirement will ensure that water companies prove to the Commission's satisfaction prior to sale that the property is truly no longer necessary or useful, the prerequisite to § 790 treatment.

3.3. Sale of Water Utility Assets Due to Condemnation

There are three condemnation scenarios at issue in this proceeding. The first involves condemnation/eminent domain cases that go to judgment, and the just compensation is ordered by the court. The second involves sales in anticipation of condemnation, where a water company sells its property in order to stave off a condemnation action or settle a pending claim. The third scenario arises because California law 1) treats a government agency's duplication of the service or facilities provided by a privately-owned water utility as a taking of the property of the private utility to the extent it renders the private utility's property useless, inoperative, or reduces its value, and 2) provides for payment of just compensation. Pub. Util. Code § 1501 *et seq.*

In each scenario, the water companies claim the proceeds should be treated as a gain on sale pursuant to § 790. It follows, they claim, that any proceeds from such sales should be reinvested in water utility property, rather than allocated to ratepayers. By contrast, DRA/TURN contend proceeds attributable to condemnation/threat of condemnation/service duplication are not § 790 sales at all and therefore that the proceeds must be returned to ratepayers.

3.3.1. Comments—Condemnation/Threat of Condemnation/Service Duplication

DRA/TURN contend that sales of utility assets due to condemnation or threat of condemnation should not fall under § 790. They cite D.04-07-034,[18] stating that proceeds from inverse condemnation settlements received by San Gabriel Valley Water Company (San Gabriel Water) were not subject to § 790 because they did not involve the actual sale of real property.

By contrast, CWA contends a transfer of property pursuant to a condemnation is a sale. It refutes the rationale denying "sale" status to condemnations (which controls that § 790 requires a "voluntary" act and selling under threat is not voluntary[19]) by asserting that the rationale is a strained interpretation of the word "encouraged" in § 790. It cites past (pre-§ 790) Commission decisions allocating gains on sale of property faced with condemnation.[20] *See also* Park Water Comments (7/20/06) at 6 ("[n]owhere in Section 790 does it specify that a sale must be voluntary in order for the utility to be allowed to reinvest the gain.").

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[18] 2004 Cal. PUC LEXIS 334, at *71-*73. DRA/TURN also cited D.06-06-036, in which the Commission reaffirmed its D.04-07-034 holding.

[19] This "voluntariness" rationale was initially included in ALJ Thomas' proposed decision in Phase One of this proceeding, and also appears in ALJ Barnett's proposed decision in A.05-08-021, which involved further consideration of the San Gabriel Water issues not fully resolved in D.04-07-034.

[20] CWA cites D.90-02-020, 35 CPUC 2d 275, 1990 Cal. PUC LEXIS 95, at *34; D.90-12-118, 29 CPUC 2d 33, 1990 Cal PUC LEXIS 1406, at *25; D.95-08-020, 51 CPUC 2d 50, 1995 Cal. PUC LEXIS 626, at *10-11, and D.98-10-044, 82 CPUC 2d 422, 1998 Cal. PUC LEXIS 818, at *3, *7, *11-*12.

Initially, California American Water Company (Cal-Am) took a different approach to the issue than the other water companies.[21] It claimed, contrary to CWA and Park Water, that § 790 does not cover condemnations at all because it only applies to "voluntary" sales of real property, the same argument the ratepayer advocates make here. Rather, Cal-Am contended, shareholders were entitled to all proceeds of such sales under the Commission's *Suburban Water Systems*[22] and *Redding I* decisions.[23] Cal-Am later partially withdrew its comments, stating that "no-longer-needed real estate parcels sold under condemnation or the threat or imminence of condemnation would qualify for Section 790 reinvestment if all the other elements required by that code section are satisfied."[24]

In a case for San Gabriel Water, Application (A.) 05-08-021, the same issues were briefed and addressed. There, San Gabriel Water claimed that even where the public agency does not physically acquire the utility's property, the utility may account for such payments as proceeds of a sale.[25] San Gabriel Water contended that inverse condemnation/service duplication proceeds are treated under the California Code of Civil Procedure and under state and federal tax

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[21] Cal-Am Comments (7/20/06) at 2-3.

[22] D.94-01-028, 53 CPUC 2d 45, 1994 Cal. PUC LEXIS 45.

[23] D.85-11-018, 19 CPUC 2d 161, 1985 Cal. PUC LEXIS 958.

[24] *Partial Withdrawal of Comments of California-American Water Company*, filed July 20, 2006, at 2.

[25] *San Gabriel Valley Water Co.* v. *Montebello*, 84 Cal. App.3d 757 (1978) and *Re San Gabriel Valley Water Co.*, D.92112 (hereinafter *Montebello*).

laws as inverse condemnation damages and, pursuant to Pub. Util. Code § 1501, as an involuntary sale of property. San Gabriel Water therefore asserted that it should account for such proceeds as attributable to a sale of real property. We issued a decision on A.05-08-021 in D.07-04-046, but deferred the § 790 issue to this proceeding for resolution.

3.3.2. Discussion—Condemnation/Threat of Condemnation/Inverse Condemnation

The key question is whether a condemnation is a "sale" covered by § 790. Section 789.1(d) suggests otherwise, and that the statute requires a voluntary act by the utility to be triggered: "It is the policy of the state that water corporations *be encouraged* to dispose of real property that once was, but is no longer, necessary or useful in the provision of water utility service . . . ." (Emphasis added.) There is no way to encourage water companies to dispose of real property through condemnation, since the impetus for condemnation (including inverse condemnation) comes from an outside agency and not the utility itself. We conclude that the Infrastructure Act applies only to voluntary acts by a water company. Consequently, § 790 is not applicable to involuntary conversions due to any of the three types of condemnation at issue here. Thus, gains from condemnation sales are not subject to § 790, and the allocation of net gains from condemned non-depreciable property is 67% to ratepayers and 33% to shareholders in accordance with D.06-12-043. For depreciable property, water utilities shall allocate 100% of the gains to ratepayers.

Condemnation is the involuntary transfer of property rights. Section 1413 makes clear that condemnation is a "taking" under eminent domain.[26] By contrast, a sale under § 790 is a non-coercive sale. Condemnation is therefore not within the purview of § 790.[27]

With regard to inverse condemnation, water utilities may receive proceeds from inverse condemnation under the "Service Duplication Law," Pub. Util. Code § 1501 *et seq.* Such condemnations occur when the government constructs water facilities that duplicate the facilities of a private water utility. Under § 1503, the private utility is entitled to compensation for the reduction in value of its property even where the government does not physically acquire the utility property. Damages arising from an inverse condemnation proceeding are not

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[26] Pub. Util. Code § 1413 *et seq.* ("the political subdivision . . . shall commence an action . . . to take such lands, property, and rights under eminent domain proceedings.").

[27] Moreover, property taken by condemnation—inverse or direct—is not necessarily property that is no longer necessary or useful *to the water utility*. A condemning body may take property that the water utility otherwise would continue to use to provide water service. Such property does not come under the statute because the statute only applies to "real property that once was, but is no longer, necessary or useful in the provision of water utility service. . . ." § 789.1(d). If, at the time of condemnation, the property continues to be necessary or useful, the fact of condemnation is not, in our view, sufficient to change the pre-condemnation character of the property.

Only property that at the time just before the sale is no longer necessary or useful is covered by the statute. Any other interpretation could encourage water companies to sell property that is necessary or useful and that should continue to be used for water service. It is the use just prior to the sale or condemnation that one must examine to determine whether § 790 applies. The legislative history supports this conclusion, because the legislative analysis speaks of "obsolete facilities." *See* April 5, 1995 Senate Floor Analysis of Senate Bill 1025, the legislation that became the Infrastructure Act, available on the Internet at http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1001-1050/sb_1025_cfa_950405_165744_sen_floor.html.

proceeds from a "sale" of property. Section 1501 refers to a "taking," not a "sale." Thus, § 790 does not apply, because in a service duplication scenario, no property is transferred or sold.

Because service duplication proceeds are not covered by § 790, once again the gains should be treated in accordance with the general gain on sale rule we promulgated in Phase 1 of this proceeding. We held in D.06-05-041 and D.06-12-043 that for depreciable property such as buildings, 100% of the gain should be allocated to ratepayers. For nondepreciable property (*e.g.*, water rights and land), the allocation formula is 67-33, with 67% of the gain on sale going to ratepayers and the other 33% to shareholders.

4. Comments on Alternate Proposed Decision

The alternate proposed decision of the ALJ in this matter was mailed to the parties in accordance with § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. Differences in the electric, gas and water industries also merit different § 455.5 definitions for each industry.

2. The electric utilities and most other interested parties reached a consensus on the types of electric facility subject to the § 455.5 reporting requirements.

3. The water utilities and most other interested parties reached a consensus on the types of water facility subject to the § 455.5 reporting requirements.

4. The parties could not reach consensus on a definition of "major facility" for natural gas facilities.

5. The consensus definition of types of electric facility subject to the § 455.5 reporting requirements will cover most large generation facilities of the three largest electric utilities, PG&E, SCE, and SDG&E.

6. The § 455.5 definition we adopt for electric utilities appropriately defines "major facility" as a relative term.

7. Gas utility-owned wells and gathering facilities tend to be small and dispersed over broad areas, and are therefore not "major facilities" by any party's definition. Gas storage fields, by contrast, are large, high-value facilities whose inclusion in rate base could have significant impact on ratepayers.

8. If gas storage fields are not included under the statute, no gas facilities will be reportable pursuant to § 455.5.

9. Out of service plant with a high net (depreciated) value will result in the most significant ratepayer overpayments, and therefore should be reported under § 455.5.

10. Water utilities do not purchase CIAC property.

11. Allowing a full rate of return on property purchased with proceeds from the sale of CIAC property might create an incentive for water utilities to sell such property in order to reinvest the proceeds in infrastructure and earn a rate of return where none was earned before sale.

12. Forced sales of water utility property occur without encouragement.

13. Damages arising from an inverse condemnation proceeding are not proceeds from a sale of property.

Conclusions of Law

1. The purpose of the Pub. Util. Code § 455.5 is to ensure that utilities not earn a rate of return on utility assets (or portions thereof) that are out of service. Allowing a rate of return on such property would overcompensate the utilities at ratepayers' expense.

2. Pub. Util. Code § 455.5 requires reporting of out of service conditions for gas storage fields.

3. We should adopt the following § 455.5 definition for electric utilities:

> For electric utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 includes any generation plant or facility with nameplate capacity of 50 megawatts (MW) or more, or that represents at least one percent (1%) of an electric utility's retained generation system capacity, whichever is smaller. System capacity includes the utility's ownership share in jointly-owned and out-of-state facilities.
>
> A reportable outage of a "portion" of a major generation facility should be interpreted as an outage of any independent operating unit at a major generation facility. Thus, electric utilities must report any outage of a single generating unit for which the capacity of the entire plant exceeds the 50 MW or 1% minimums.
>
> A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

4. We should adopt the following § 455.5 definition for gas utilities:

> For gas utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 is a facility representing at least 25% of the utility's storage capacity. A "major generation or production facility" for this purpose includes a gas storage field. A gas storage field is "out of service" if the mechanical equipment used to inject or withdraw gas at the field is not available to inject or withdraw gas at a rate of at least 25% of the capacity of the equipment.

A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

5. We should adopt the following § 455.5 definition for water utilities:

For water utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 is a facility or combination of facilities, such as wells, interconnections, surface water diversion structures, and/or treatment facilities, that: (a) produces water of a quality suitable for delivery into the distribution system of the utility or into storage for eventual delivery to customers; (b) is accounted for as "Source of Supply Plant" in Accounts 311 through 317 of the Uniform System of Accounts for Water Utilities, or as "Pumping Plant" in Accounts 321 through 325, or as "Water Treatment Plant" in Accounts 331 and 332; and (3) has a Net Plant Value of at least $3,000,000 in the case of a Class A water company, or $2,000,000 in the case of a Class B water company.

A "portion" of a major production facility is a facility that, if it is out of service, prevents production of water from the major facility as a whole.

"Net Plant Value" means recorded plant in service minus accumulated depreciation.

A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

6. Awarding a zero rate of return on plant purchased with CIAC proceeds is not consistent with § 790.

7. Water utilities should receive Commission authorization to sell CIAC property.

8. Condemnation is the involuntary transfer of property rights.

9. Section 790 is intended to encourage certain voluntary action by water companies. The statute is intended to encourage water companies to sell real property that is no longer necessary or useful for utility service.

10. Condemnation/threat of condemnation/inverse condemnation/service duplication proceeds are not covered by § 790.

11. Condemnation/threat of condemnation/inverse condemnation/service duplication proceeds should be treated in accordance with the general gain on sale rule we promulgated in Phase 1 of this proceeding, where 100% of the gain should be allocated to ratepayers for depreciable property, and 67% of the gain on sale should go to ratepayers and the other 33% to shareholders for nondepreciable property.

O R D E R

IT IS ORDERED that:

1. We adopt the following § 455.5 definition for electric utilities:

   For electric utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 includes any generation plant or facility with nameplate capacity of 50 megawatts (MW) or more, or that represents at least one percent (1%) of an electric utility's retained generation system capacity, whichever is smaller. System capacity includes the utility's ownership share in jointly-owned and out-of-state facilities.

   A reportable outage of a "portion" of a major generation facility should be interpreted as an outage of any independent operating unit at a major generation facility. Thus, electric utilities must report any outage of a single generating unit for which the capacity of the entire plant exceeds the 50 MW or 1% minimums.

   A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

2. We adopt the following § 455.5 definition for gas utilities:

   For gas utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 is a facility

representing at least 25% of the utility's storage capacity. A "major generation or production facility" for this purpose includes a gas storage field. A gas storage field is "out of service" if the mechanical equipment used to inject or withdraw gas at the field is not available to inject or withdraw gas at a rate of at least 25% of the capacity of the equipment.

A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

3. We adopt the following § 455.5 definition for water utilities:

For water utilities, a "major generation or production facility" for purposes of the requirements of Pub. Util. Code § 455.5 is a facility or combination of facilities, such as wells, interconnections, surface water diversion structures, and/or treatment facilities, that: (a) produces water of a quality suitable for delivery into the distribution system of the utility or into storage for eventual delivery to customers; (b) is accounted for as "Source of Supply Plant" in Accounts 311 through 317 of the Uniform System of Accounts for Water Utilities, or as "Pumping Plant" in Accounts 321 through 325, or as "Water Treatment Plant" in Accounts 331 and 332; and (3) has a Net Plant Value of at least $3,000,000 in the case of a Class A water company, or $2,000,000 in the case of a Class B water company.

A "portion" of a major production facility is a facility that, if it is out of service, prevents production of water from the major facility as a whole.

"Net Plant Value" means recorded plant in service minus accumulated depreciation.

A facility is out of service and subject to the reporting requirement irrespective of the cause of the out of service condition.

4. Pursuant to § 455.5, gas utilities shall report out of service conditions on all facilities, including gas storage facilities, that meet the 25% threshold. If they are concerned about the security implications of reporting the size of facilities, they

may file a motion or declaration concurrently with their § 455.5 submission seeking confidential treatment.

5. Any water company that sells real property that a developer contributed to the water company in aid of construction (CIAC property) which it claims or will claim is subject to § 790 shall seek leave from the Commission to do so. In so doing, the water company shall prove that the property is no longer necessary or useful and that the sale is not intended merely to gain an opportunity for the water company to earn a rate of return on infrastructure purchased with the sale proceeds. The water company shall seek such approval by application or Advice Letter prior to any such sale, and may not make the sale without Commission authorization.

6. We do not preclude any party from asserting, in an individual water company's general rate case or elsewhere, that its rate of return should be lowered to reflect that some property in its rate base was originally CIAC and thus acquired for free.

7. Whether the approval in Ordering Paragraph requires an application or an Advice Letter will be governed by the rules of our § 851 pilot program, approved in Resolution ALJ-186 (August 30, 2005), or successor document. That pilot program allows utilities to elect to file an Advice Letter instead of a § 851 application for small transactions.

8. Condemnation/threat of condemnation/inverse condemnation/service duplication proceeds shall not be governed by Pub. Util. Code § 790. Water companies shall treat such proceeds in accordance with the general gain on sale rule we promulgated in Phase 1 of this proceeding, where 100% of the gain shall be allocated to ratepayers for depreciable property, and 67% of the gain on sale

shall go to ratepayers and the other 33% to shareholders for nondepreciable property.

9. Rulemaking 04-09-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

COMMENTS RECEIVED[1] – PHASE TWO GAIN ON SALE R.04-09-003

OPENING COMMENTS

1. Comments of California-American Water Company in Response to June 29, 2006 ALJ's Ruling Regarding Allocation of Gains on Sale of Utility Assets, filed 7/20/2006
2. Opening Comments of California Water Association in Response to ALJ's Ruling, filed 7/20/2006
3. Comments of Park Water Company on the Issues Raised in the ALJ's Ruling Regarding Allocation of Gains on Sale of Utility Assets Issued by ALJ Thomas on June 29, 2006, filed 7/20/2006
4. Joint Comments of the Division of Ratepayer Advocates and The Utility Reform Network on ALJ's Ruling Regarding Allocation of Gains on Sale of Utility Assets, filed 7/20/2006
5. Comments of Aglet Consumer Alliance, filed 7/20/2006
6. Joint Comments of Southern California Edison Company, Pacific Gas And Electric Company, San Diego Gas & Electric Company And Southern California Gas Company Proposing A Definition For "Major Facility" As Used In Pub. Util. Code § 455.5, filed 7/20/2006

REPLY COMMENTS

7. SCE's Reply Comments Proposing a Consensus Definition for "Major Facility" as Used in Pub. Util. Code § 455.5, filed 9/8/2006
8. Reply Comments of SDG&E and SoCalGas Regarding the Definition of "Major Facility" as Used in Pub. Util. Code § 455.5, filed 9/8/2006
9. Reply Comments of PG&E re Definition for "Major Facility" as Used in Pub. Util. Code § 455.5, filed 9/8/2006
10. Reply Comments of Division of Ratepayer Advocates, filed 9/8/2006
11. Reply Comments of PacifiCorp on the Definition for "Major Facility" as Used in Pub. Util. Code § 455.5, filed 9/8/2006
12. Further Reply Comments of Park Water Company on Issue (A) Raised in the ALJ's Ruling Regarding Allocation of Gains on Sale of Utility Assets Issued by ALJ Thomas on June 29, 2006, filed 9/8/2006
13. Further Reply Comments of California Water Association in Response to ALJ's Ruling, filed 9/8/2006
14. Reply Comments of Aglet Consumer Alliance, filed 9/8/2006
15. Reply Comments of California Water Association in Response to ALJ's Ruling, filed 8/21/2006

[1] In this decision we refer to each set of comments by the abbreviated name of the party filing it and the date filed.

16. Reply Comments of DRA, filed 8/21/2006
17. Initial Reply Comments of Aglet Consumer Alliance, filed 8/21/2006
18. Reply Comments of California-American Water Company in Response to June 29, 2006 Administrative Law Judge's Ruling Regarding Allocation of Gains on Sale of Utility Assets, filed 8/21/2006
19. Original Reply Comments of Park Water Company on Issues (B) and (C) Raised in the ALJ's Ruling Regarding Allocation of Gains on Sale of Utility Assets Issued by ALJ Thomas on June 29, 2006, filed 8/21/2006

OTHER COMMENTS

20. Partial Withdrawal of Comments of California-American Water Company filed July 20, 2006, filed 3/7/2007

(END OF APPENDIX A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated August 2, 2007, at San Francisco, California.

/s/ KE HUANG
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********** SERVICE LIST **********
Last Update on 15-JUN-2007 by: EAP
R0409003 NEW LIST

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